

1 THORNTON DAVIDSON #166487  
The ERISA Law Group  
2 2055 San Joaquin Street  
Fresno, CA 93721-2717  
3 Telephone: (559) 256-9800  
Facsimile: (559) 256-9795  
4

Attorneys for Plaintiff  
5 JAMES MICHAEL BROWN

6 PATRICIA K. GILLETTE, State Bar No. 74461  
[pgillette@orrick.com](mailto:pgillette@orrick.com)  
7 KRISTEN M. JACOBY, State Bar No. 243857  
[kjacoby@orrick.com](mailto:kjacoby@orrick.com)  
8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
9 405 Howard Street  
San Francisco, CA 94105-2669  
10 Telephone: +1-415-773-5700  
Facsimile: +1-415-773-5759  
11

Attorneys for Defendant  
12 BANK OF AMERICA GROUP BENEFITS PROGRAM  
(identified by Plaintiff as "Bank of America Self-Insured  
13 Medical Plans," "Associate Life Insurance - Basic" and  
"Associate Life Insurance - Supplemental Plan"  
14

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 JAMES MICHAEL BROWN,  
19 Plaintiff,  
20

21 v.

22 BANK OF AMERICA SELF-INSURED  
MEDICAL PLANS: ASSOCIATE LIFE  
INSURANCE - BASIC AND ASSOCIATE  
23 LIFE INSURANCE - SUPPLEMENTAL  
PLAN,  
24

Defendants.  
25

Case No. CGC-07-4844 EDL

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: March 11, 2008  
Time: 10:00 a.m.  
Judge: Hon. Elizabeth Laporte

**PLAINTIFF GRANTED  
PERMISSION TO APPEAR BY  
TELEPHONE**

26 Pursuant to Federal Rules of Civil Procedure 16(b) and the Court's Case  
27 Management Conference Order, the parties to the above entitled action jointly submit this case  
28

1 management statement:

2 1. Jurisdiction and Service

3 The parties agree that this Court has subject matter jurisdiction over Plaintiff's  
4 claim pursuant to the Employee Retirement Income Security Act of 1974, as amended  
5 ("ERISA"), 29 U.S.C. section 1132(a). Jurisdiction is proper pursuant to 29 U.S.C. section 1331  
6 because this action arises under the laws of the United States of America. 29 U.S.C. section  
7 1132(e)(1) provides for Federal District Court jurisdiction.

8 All parties are subject to this Court's jurisdiction.

9 All parties have been served.

10 2. Facts

11 Plaintiff was a participant in the Bank of America Group Benefits Program.  
12 Plaintiff was receiving benefits from Defendant's Long Term Disability ("LTD") plan, insured by  
13 Metropolitan Life Insurance Company ("Met Life"). In December of 2005, Met Life determined  
14 that Plaintiff was no longer disabled and terminated his LTD benefits. Plaintiff appealed Met  
15 Life's determination, and his LTD benefits were retroactively reinstated on December 26, 2006.

16 Plaintiff claims that when his LTD benefits were terminated, Defendant Bank of  
17 America Group Benefits Program terminated his health and life insurance benefits. Defendant  
18 claims that Plaintiff's entitlement to those benefits was terminated prior to the cessation of LTD  
19 benefits, due to Plaintiff's failure to pay the premiums on those benefits. Defendant claims that  
20 Plaintiff fell behind in the payment of premiums and his benefits lapsed. Plaintiff appealed that  
21 decision to Defendant's Benefits Appeals Department, and was offered a chance to pay back  
22 premiums in order to resume coverage. Plaintiff failed to pay those premiums in accordance with  
23 the offer, and his benefits were terminated.

24 On February 1, 2008, after receiving documentation of Defendant's reinstatement  
25 offer and payment delinquency, Plaintiff stipulated that he would dismiss Defendant Bank of  
26 America Self Insured Medical Plan along with his first Claim for Relief. The parties have also  
27 agreed that Plaintiff is entitled to a basic level of life insurance for which no premiums are due.

28 Defendant maintains that Plaintiff is not entitled to supplemental coverage.

1 Plaintiff maintains he retains a right to such coverage because Defendant never provided him a  
2 notice of conversion rights as required by California law.

3 3. Legal Issues

4 Whether Plaintiff is entitled to retroactive and prospective supplemental life  
5 insurance through the Plan. The parties agree that Plaintiff is entitled to a basic level of coverage,  
6 equivalent to one year of his salary.

7 4. Motions

8 There are currently no motions pending. Plaintiff does not anticipate filing any  
9 motions, unless there is a dispute over discovery. Defendant anticipates filing a motion for  
10 summary judgment.

11 5. Amendment of Pleadings

12 The Parties do not anticipate filing amended pleadings.

13 6. Evidence Preservation

14 Defendant has notified the appropriate witnesses of the necessity to preserve  
15 documentation relevant to this matter.

16 7. Disclosures

17 Disclosures pursuant to F.R.C.P. Rule 26 will be made shortly following the initial  
18 CMC.

19 8. Discovery

20 No discovery has taken place to date, although Defendant has informally provided  
21 Plaintiff with certain documents relevant to his claim.

22 Plaintiff contends that the Administrative Record should include MetLife's claims  
23 manuals.

24 Plaintiff intends to conduct discovery regarding the nature, extent, and effect on  
25 the decision making process of MetLife's conflict of interest because such information is relevant  
26 in assessing whether it abused its discretion. Plaintiff intends to serve: request for production of  
27 documents, interrogatories, and notice a Rule 30(b)(6) of MetLife.

28 Plaintiff believes a Rule 26(f) discovery order and conference is necessary.

Defendant intends to conduct written discovery, and to take Plaintiff's deposition.

9. Class Actions

This is not a class action.

10. Related Cases

There are no other related cases.

11. Relief

This is a complaint for declaratory relief.

12. Settlement and ADR

The Parties have selected ENE for the ADR process and have engaged the services of Bradford Huss. Defendant is investigating Plaintiff's remaining claim of entitlement to supplemental life insurance, and will convene another conference with Mr. Huss when additional information is available. To that end, the parties jointly request an extension of the March 20, 2008 deadline. Both parties request until May 2, 2008 to complete ENE.

13. Consent to Magistrate Judge for All Purposes

Both Parties consent to the use of a Magistrate Judge for all purposes.

14. Other References

This case is not suitable for binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

None.

16. Expedited Schedule

The Parties believe that this case would be suitable for handling on an expedited basis.

17. Scheduling

Discovery cutoff: June 6, 2008

Hearing of dispositive motions: August 1, 2008

Pretrial conference: October 6, 2008. The parties request that the Court set a trial date at the Pretrial conference.

18. Trial

This case is a bench trial and is expected to last one day.

19. Disclosure of Non-party Interested Entities or Persons

Plaintiff has made his Certification of Non-party Interested Entities or Persons, as

1) Plaintiff, 2) Defendant, and 3) Defendant's Insurers. Defendant has filed a Certification of Non-party Interested Entities or Persons as 1) Bank of America Corporation, and 2) Bank of America, National Association.

20. Other Matters

None.

Dated: March 10, 2008

THORNTON DAVIDSON  
The ERISA Law Group

/s/ Thornton Davidson

THORNTON DAVIDSON  
Attorneys for Plaintiff  
James Michael Brown

Dated: March 10, 2008

PATRICIA K. GILLETTE  
KRISTEN M. JACOBY  
Orrick, Herrington & Sutcliffe LLP

/s/ with permission, Kristen M. Jacoby

PATRICIA K. GILLETTE  
KRISTEN M. JACOBY  
Attorneys for Defendant  
Bank of America Group Benefits Program

**[PROPOSED] ORDER**

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

HONORABLE ELIZABETH D. LAPORTE  
UNITED STATES DISTRICT COURT JUDGE